RE JONATHAN LAIDLAW QC; APPLICANT

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[ORIGINATING MOTION NO: WA-17D-18-05-2022]
26 JULY 2022

Abstract – *The law does not allow the admission of a foreign legal practitioner with special qualifications or experience per se; it must be a qualification or experience of a nature which the local advocates and solicitors do not possess.*

LEGAL PROFESSION: *Admission – Application for – Application to admit Queen's Counsel to practise as Advocate and Solicitor of High Court of Malaya – Whether applicant had special qualifications or experience of nature not available amongst advocates and solicitors in Malaysia – Whether applicant eligible and qualified to be admitted – Legal Profession Act 1976, s. 18(1)*

This was an application by the applicant, to be admitted to practise as an Advocate and Solicitor of the High Court of Malaya, made by way of a notice of originating motion under s. 18(1) of the Legal Profession Act 1976 ('LPA'). The applicant sought to be admitted and to appear as lead counsel of Dato' Sri Mohd Najib Hj Abd Razak ('appellant') in *Dato' Sri Mohd Najib Hj Abd Razak v. Attorney General* ('appeal') before the Federal Court and all other causes or matters related thereto. The grounds for this application were, *inter alia*, (i) the appeal will involve serious, complex and/or novel issues related to several branches of criminal and civil laws, practice and evidence, the constitutional rights of the appellant, the conduct of proceedings by the prosecution, the adjudication of criminal cases by a trial court and the administration of the criminal justice system; (ii) the applicant possessed special qualifications, experience and expertise which was not available amongst advocates and solicitors in Malaysia; and (iii) the applicant was eligible and qualified to be admitted to practise as an Advocate and Solicitor of the High Court of Malaya, according to s. 18(1) of the LPA to appear as lead counsel on behalf of the appellant. It could be alluded that the appeal concerned local laws *ie*, the Penal Code ('PC'), the Criminal Procedure Code ('CPC'), the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act') and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA') The only issue that arose was whether the applicant had special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of the appeal.

Held (dismissing application):

(1) The list of issues raised by the appellant's counsel were not complex, exceptional nor serious warranting the *ad hoc* admission of the applicant to be the lead counsel for the purpose of the appeal before the Federal Court. The applicant did not have special qualifications or experience in conducting criminal trials and appeals like the charges against the appellant, namely s. 23 of the MACC Act, s. 409 of the PC and s. 4 of the AMLATFPUAA. The contents and averments in the affidavit in support did not substantiate the applicant's special qualifications or experience to conduct the appellant's appeals relating to the said charges. (paras 81 & 82)

(2) The applicant had not shown himself as one who possessed special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia. The applicant had not shown that local advocates and solicitors lacked the ability and/or special qualifications or experience to conduct the appeals relating to the said charges and all other causes or matters related thereto. In fact, there were several reported precedent case laws on s. 23 of the MACC Act, s. 409 of the PC, s. 4(1) of the AMLATFPUAA, the CPC and art. 5 of the Federal Constitution. Considering the facts of the instant case, it raised genuine concern and doubts to the extent the *ad hoc* admission of the applicant (not knowing the local laws) would benefit the local legal fraternity. The applicant failed to satisfy s. 18(1) of the LPA. (paras 82-86 & 96)

(3) Looking at the local case laws that have been developed over the years along with the necessary amendments made to the CPC, the MACC Act and the AMLATFPUAA, the local advocates and solicitors are well capable of handling such cases at all tiers of the court in Malaysia. This did not justify the need to have the applicant, a Queen's Counsel, to be admitted on an *ad hoc* basis as the lead counsel for the appeal before the Federal Court. (para 90)

Case(s) referred to:

Aisyah Mohd Rose & Anor v. PP [2016] 1 CLJ 529 CA ***(refd)***
Attorney General & Ors v. Geoffrey Robertson [2002] 2 CLJ 493 FC ***(refd)***
Cherie Booth QC v. Attorney General, Malaysia & Ors [2006] 4 CLJ 224 FC ***(refd)***
D'Cruz v. Attorney-General, Malaysia & Anor [1971] 1 LNS 26 HC ***(refd)***
Dato' Sri Mohd Najib Hj Abd Razak v. PP [2022] 4 CLJ 231 CA ***(refd)***
Hamimah Idruss v. PP [2020] 6 CLJ 407 CA ***(refd)***
Husdi v. PP [1980] 1 LNS 29 FC ***(refd)***
Husdi v. PP [1979] 1 LNS 33 HC ***(refd)***
Jude Philomen Benny v. Majlis Peguam Malaysia & Anor [1997] 1 LNS 426 HC ***(refd)***
Lee Kwan Woh v. PP [2009] 5 CLJ 631 FC ***(refd)***
Lee Wong Tiang v. PP; Re SK Lee, Applicant [1971] 1 LNS 62 HC ***(refd)***
Letitia Bosman v. PP & Other Appeals [2020] 8 CLJ 147 FC ***(refd)***

Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (Interveners) [2007] 4 CLJ 725 FC ***(refd)***
Peguam Negara & Ors v. Geoffrey Robertson [2002] 2 CLJ 493 FC ***(refd)***
PP v. Dato' Sri Mohd Najib Hj Abd Razak [2019] 6 CLJ 561 FC ***(refd)***
Siti Aisyah v. PP [2019] 7 CLJ 27 CA ***(refd)***
Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors [2021] 6 CLJ 199 FC ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***

Legislation referred to:
Advocates and Solicitors Ordinance 1947, s. 8A(2)
Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1)(b), 23
Contracts Act 1950, s. 75
Federal Constitution, art. 5
Legal Profession (Amendment) Act 1983, s. 14
Legal Profession Act 1976, ss. 11(2), 18(1)
Malaysian Anti-Corruption Commission Act 2009, ss. 23(2), (4), 50(1),
Penal Code, ss. 402A, 409
Prevention of Corruption Act 1961, s. 4(c)

For the applicant - Harvinderjit Singh, Rahmat Hazlan, Muhammad Farhan Muhammad Shafee & Wan Muhammad Arfan Wan Othman; M/s Shafee & Co
For the Honourable AG - Shamsul Bolhassan; SFC
For the prosecution - Sithambaram Vairavan, Donald Joseph Franklin & Mohd Ashrof Adrin Kamarul, DPPs
For the Malaysian Bar - Bastian Pius Vendargon, Annemarie Pravina Vendargon & Adrian Kumar Vendargon; M/s Bastian Vendargon
For the Kuala Lumpur Bar Committee - Gurdial Nijar Singh, Abraham Au Tian Hui & Lim Sze Han; M/s Yeoh Mazlina & Partners

Reported by Lina E

JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

[1] This is an application of Jonathan Laidlaw QC (Passport No: 560682382) (the applicant) to admit him to practise as an advocate and solicitor of the High Court of Malaya. The application is made by way of notice of originating motion dated 31 May 2022 (OM) (encl. 1) under s. 18(1) of the Legal Profession Act 1976 (LPA).

[2] The applicant seeks to be admitted and to appear as lead counsel on behalf of the appellant, Dato' Sri Mohd Najib bin Hj Abd Razak (the appellant), in the Federal Court of Malaysia Criminal Appeal(s) No: 05(L)-289-12-2021(W), 05(L)-290-12-2021(W) and 05(L)-291-12-2021(W), *Dato' Sri Mohd Najib bin Hj Abd Razak v. Attorney General* (the appeal) and all other causes or matters related thereto.

A **Background Facts**

[3] The appellant's counsel, Tan Sri Muhammad Shafee bin Md. Abdullah has filed an OM and affidavit in support dated 30 May 2022 praying for the following orders:

B (i) that the applicant be admitted to practise as an advocate and solicitor of the High Court of Malaya according to s. 18(1) of the LPA to appear as lead counsel on behalf of the appellant, in respect of the appeal and all other causes or matters related thereto;

(ii) that there be no order as to costs of this application; and

C (iii) such other and/or further reliefs and/or orders as deemed reasonable and fair by this honourable court to be granted to the applicant.

[4] The grounds of this OM are summarised as follows:

(a) *vide* the appeal, the appellant appeals to the Federal Court of Malaysia
D against the orders of the Court of Appeal of Malaysia which dismissed the appellant's appeal against the convictions and sentences pronounced against him by the High Court of Kuala Lumpur;

(ii) the appeal will involve serious, complex and/or novel issues related to several branches of criminal and civil laws, practice and evidence, the
E constitutional rights of the appellant, the conduct of proceedings by the prosecution, the adjudication of criminal cases by a trial court and the administration of the criminal justice system;

(iii) Messrs Shafee & Co are solicitors for the appellant in the appeal and the
F appellant wishes to engage the professional services of the applicant to act as lead counsel in the appeal. Messrs Shafee & Co and Tan Sri Muhammad Shafee bin Md Abdullah have instructed the applicant accordingly;

(iv) for the purposes of the appeal, the applicant possesses special
G qualifications, experience and expertise which is not available amongst advocates and solicitors in Malaysia; and

(v) the applicant is eligible and qualified to be admitted to practise as an advocate and solicitor of the High Court of Malaya according to s. 18(1) of the LPA to appear as lead counsel on behalf of the appellant in respect
H of the appeal and all other causes or matters related thereto.

Issue

[5] As this OM is made under s. 18(1) of the LPA, the only issue that requires the court's consideration is:

I Whether the applicant has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of the appeal.

Section 18 Of The LPA

[6] Section 18 of the LPA reads as follows:

18. Admission in special cases

(1) Notwithstanding anything contained in this Act, the Court may, *for the purpose of any one case* and subject to the following subsections, *admit to practise as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court and no person shall be admitted to practise as an advocate and solicitor under this subsection unless:*

(a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(b) he has been instructed by an advocate and solicitor in Malaysia.

(2) Any person applying to be admitted under this section shall do so by originating motion verified by his own affidavit, or that of the advocate and solicitor instructing him, stating the names of the parties and the brief particulars of the cause or matter in which the applicant intends to appear, and exhibiting in the affidavit the consent of the applicant to appear in the cause or matter; the originating motion and affidavit or affidavits shall be served on the Attorney General, the Secretary of the Bar Council and of the State Bar Committee in the State where such cause or matter is to be heard and the other party or parties to the cause or matter; at the time of such service the applicant shall pay one hundred ringgit each to the Secretary of the Bar Council and of the State Bar Committee to cover their costs incurred in the application.

(3) *Before admitting a person under this section, the Court shall have regard to the views of each of the persons served with the application.*

(4) The Registrar shall, on payment of the prescribed fee, issue to every person admitted under this section a certificate to practice specifying in it the causes or matters in which he is permitted to appear; and any person to whom a certificate to practise has been issued under this subsection shall for the purpose of his employment in such causes or matters be deemed to be a person to whom a certificate to practise has been issued under section 29.

(5) The Registrar shall not enter upon the Roll but shall keep a separate roll for the names of persons admitted under this section.

(6) In this section the words "cause or matter" include any interlocutory or appeal proceedings connected with any cause or matter. (emphasis added)

[7] The plain and ordinary reading of the above provision would indicate that this court may exercise its judicial discretion to admit the applicant to practise as an advocate and solicitor in this country provided that he fulfils the very requirements provided under s. 18(1) of the LPA.

The Historical Development Of S. 18(1) Of The LPA

[8] The provision regarding admission of a foreign legal practitioner to practise as an advocate and solicitor have gone through changes on a few occasions.

[9] Before 1976, the *ad hoc* admission of a foreign legal practitioner was governed by s. 8A of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947).

[10] The provision of s. 8A of the Advocates and Solicitors Ordinance 1947 reads as follows:

> Section 8A(1) Notwithstanding anything contained in this Ordinance the Court may for the purpose of any one case and subject to the following sub-sections admit to practise as an advocate and solicitor any person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of this Ordinance.
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> (2) No person shall be admitted to practise as an advocate and solicitor under sub-section (1) unless:
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> (a) **for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and**
>
> (b) **he has been instructed by an advocate and solicitor in Malaysia**
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> (3) Any person applying to be admitted under this section shall do so by originating motion verified by an affidavit of the applicant or of the advocate and solicitor instructing him, stating the names of the parties and brief particulars of the case in which the applicant intends to appear; and the originating motion and affidavit or affidavits shall be served on the Attorney-General, the Bar Council and the other party or parties to such case.
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> (4) Before admitting a person under this section the Court shall have regard to the views of each of the persons served with the application.
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> (5) The Registrar shall on payment of a fee of one hundred dollars issue to every person admitted under this section a certificate to practise specifying in it the case in which such person is permitted to appear; and any person to whom a certificate to practise has been issued under this sub-section shall for the purpose of his employment in such case be deemed to be a person to whom a certificate to practise has been issued under section 25 of this Ordinance.

(6) The Registrar shall not enter the names of persons admitted under this section upon the Roll but shall keep a separate roil for persons admitted under this section. (emphasis added)

[11] The Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947) was then repealed by the LPA which came into force on 1 June 1977. *Ad hoc* admission of a foreign legal practitioner under s. 8A of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947) was provided in s. 18 of the LPA as admission in special cases but did not have those words found in s. 8A of the Advocates and Solicitors Ordinance 1947, "special qualifications or expertise of a nature not available amongst advocates and solicitors in Malaysia." This was the prevailing position till 16 December 1983.

[12] Then s. 18(1) of the LPA was subsequently substituted *vide* s. 14 of the Legal Profession (Amendment) Act 1983.

[13] On 16 December 1983, those words were included in s. 18 of the LPA thus bringing the criteria for an *ad hoc* admission of foreign lawyers in line with the earlier s. 8A of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947).

[14] Therefore, as far as the instant case is concerned, the requirement for admission of a foreign legal practitioner under the repealed and current legislation remains the same which is "for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia."

Legislative Intent

[15] The restriction imposed on the admission of a foreign legal practitioner into Malaysia under s. 18 of the LPA was explained by legislators in Parliament.

[16] In the *Hansard* dated 3 August 1983, YB Tuan Radzi bin Sheikh Ahmad, Deputy Minister from the Prime Minister's office initiated the amendment to the provision involving the admission of foreign legal practitioners. The following excerpt of the *Hansard* on pp. 8917 to 8919 is as follows:

Timbalan Menteri di Jabatan Perdana Merited (Tuan Radzi bin Sheikh Ahmad)

... Selain daripada pindaan yang tersebut di atas, pindaan adalah juga dicadangkan di dalam Rang Undang-undang ini berkenaan dengan kelayakan seseorang peguam asing untuk menjadi peguam di mahkamah negeri ini bagi maksud sesuatu guaman atau perkara tertentu. *Di bawah peruntukan yang ada sekarang, seorang peguam asing adalah dengan senang dapat diterima menjalankan sesuatu guaman ataupun perkara tertentu di Mahkamah kita. Mengikut pindaan yang dicadangkan ini seseorang peguam asing tidak dibenarkan menjalankan sesuatu kes di Mahkamah kita melainkan jika ia*

mempunyai kelayakan khas untuk menjalankan kes tersebut ataupun yang mempunyai pengalaman berkenaan dengan kes tertentu dan pengalaman seperti itu tidak didapati di kalangan Peguambela dan Peguamcara di negara kita. Sama ada peguam asing itu mempunyai kelayakan atau pengalaman akan terpulang kepada Mahkamah untuk menentukannya. Pindaan ini adalah dicadangkan memandangkan ramai peguam asing dengan senang telah diterima masuk menjalankan sesuatu guaman atau perkara di Mahkamah kita sungguhpun terdapat di negara ini peguam-peguam yang mempunyai kebolehan dan pengalaman dalam bidang kes yang dibicarakan ... (Gangguan).

(emphasis added)

[17] Reference is also made to the *Hansard* dated 4 August 1983 where YB Tuan Wan Mohd Najib bin Wan Mohamed from Pasir Putih noted on the need for the amendment in respect of the admission of the foreign legal practitioner into our country. The excerpt of the following *Hansard* on pp. 9014 and 9015 is as follows:

Wan Mohd Najib bin Wan Mohamed (Pasir Putih):

... Satu lagi saya akan menyebut ialah kedatangan peguam asing ke negara kita dan campurtangan di dalam perundangan negara kita. Kita tidak sepatutnya membiarkan perkara ini berlaku kerana perundangan dan suasana negara kita adalah berlainan dengan perundangan dan suasana di negara luar. Walau pun pada asasnya undang-undang itu adalah sama tetapi pada keadaan yang berlaku di sini adalah sangat berlainan. Jadi kedatangan peguam-peguam asing ke negara kita ini sedikit-sebanyak adalah menyentuh kedudukan negara kita dan menyentuh tentang peguam-peguam di negara kita seolah-olah peguam negara kita tidak mempunyai kelayakan sampai terpaksa mengambil peguam daripada negara asing untuk sesuatu kes tertentu. Jadi kalau inilah yang diamalkan dan dibenarkan perkara ini akan timbul. *Oleh itu, dari segi undang-undang itu adalah benar bahawa kita memerlukan peguam asing ataupun peguam asing itu jika sekiranya perlu, jika sekiranya kepakaran peguam itu adalah tidak terdapat dalam negara kita ini adalah amat perlu dan saya menyokong tentang pindaan yang dilakukan oleh Kerajaan yang ada pada hari ini.* (emphasis added)

[18] Besides, reference is also made to p. 9043 of the *Hansard* dated 4 August 1983 where YB Tuan Shamsuri bin Md Salleh from Balik Pulau noted on the issues pertaining to the admission of a foreign legal practitioner as advocate and solicitor of the High Court of Malaya. The excerpt found in the *Hansard* is as follows:

Tuan Shamsuri bin Md. Salleh (Balik Pulau):

... Tuan Yang Dipertua, *selama ini pihak-pihak yang dituduh yang merasakan mereka kurang yakin terhadap kebolehan peguam-peguam kita yang ada sekarang ini terutama orang-orang yang mempunyai wang, yang berada sanggup membawa masuk peguam-peguam asing terutama daripada England yang lebih terkenal dengan nama "Q.C." dan sebagainya dan pada pandangan saya setelah kita mencapai kemerdekaan lebih daripada 25 tahun patutlah amalan ini kita mansuhkan langsung.* Jadi, saya menyokong penuh Akta ini iaitu yang *menghadkan kemasukan peguam-peguam asing ke negara kita ini dan dengan*

adanya peraturan yang mengetatkan kemasukan peguam-peguam asing ini, ini sebagai salah satu galakan kepada peguam-peguam yang ada dalam negara kita ini untuk melengkapkan diri mereka ini dengan kebolehan-kebolehan yang setimpal dengan kebolehan-kebolehan yang ada kepada peguam asing dalam bidang-bidang tertentu. (emphasis added)

[19] In addition to the above, reference is made to pp. 9049 and 9050 of the *Hansard* dated 4 August 1983 where YB Tuan Abdillah bin Haji Abdul Hamid from Silam discussed on cl. 14 of the Legal Profession (Amendment) Bill of 1983 in respect of admission of the foreign legal practitioner into our country. The excerpt of the following *Hansard* is as follows:

Tuan Abdillah bin Haji Abdul Hamid (Silam):

... Tuan Yang Dipertua, dalam perbahasan ini juga saya ingin membahaskan *Fasal 14 Rang Undang-undang Akta Profesion di mana ia memberi peruntukan menghadkan penerimaan masuk peguam-peguam asing untuk menjalankan amalan mereka sebagai peguambela dan peguamcara di mana-mana mahkamah di Malaysia ini, kecuali bagi tujuan sesuatu kes tertentu jika pada pendapat mahkamah ia mempunyai kelayakan atau pengalaman khas yang tidak boleh didapati oleh peguamcara dan peguambela negara kita.* Dalam hal ini*, saya berpendapat penghadan kemasukan peguambela dan peguamcara asing ini akan menghilangkan keraguan para peguambela dan peguamcara di negara ini di mana mereka mendapat tentangan daripada peguam-peguam asing tersebut.* Saya berpendapat juga sesudah Rang Undang-undang Akta Profesion ini diluluskan, *sudah tentu keraguan di atas persaingan dengan peguam-peguam asing ini dapat diatasi ataupun tidaklah menjadi masalah kepada para peguamcara dan peguambela di negara kita ini.*

Dengan ini, Tuan Yang Dipertua, saya menyokong penuh Rang Undang-undang Akta Profesion Undang-undang (Pindaan) 1983 ini dengan sepenuhnya. (emphasis added)

[20] From the excerpts of both *Hansard* dated 3 and 4 August 1983, it shows that it is the clear reflection of the Parliament in respect of their reluctance in simply allowing admission of a foreign legal practitioner. This includes Queen's counsel's admission into our country unless he satisfies the stringent requirements provided under s. 18 of the LPA.

[21] It is clear that the law does not allow admission of a foreign legal practitioner with special qualifications or experience *per se* but it must be a qualification or experience of a nature which the local advocates and solicitors do not possess.

[22] Therefore, the burden of proof is on the applicant to satisfy the court that he possesses special qualifications or experience that no advocates and solicitors in Malaysia possess for the purpose of the appeal before the Federal Court.

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Decided Case Laws

[23] Cases decided prior to the enactment of the LPA under s. 8A of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947) provide a clear explanation as to what amounts to special qualifications or experience of a nature not available agonists advocates and solicitors in Malaysia.

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[24] In *Lee Wong Tiang v. PP; Re SK Lee, Applicant* [1971] 1 LNS 62; [1971] 1 MLRH 454; [1971] 2 MLJ 40 the applicant Mr Shoo Khoon Lee applied for an *ad hoc* admission under s. 8A of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947). The Attorney-General did not strongly object to the application and the grounds for not so opposing were entirely based upon the fact that as the applicant had represented the appellant at the trial it may not be right that he should not appear at the hearing of the appeal. The views of the Bar Council were similar to the views expressed by the Attorney-General in that the Bar Council neither supports nor opposes the application.

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[25] Sharma J (as His Lordship then was) allowed the application and it was held "As no attempt has been made to challenge the plea of Mr. Lee that he has special qualifications and knowledge and experience of a nature which is not available amongst the advocates and solicitors in Malaysia, I have no other alternative but to allow this application."

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[26] I would like to emphasise on the illuminating explanation given by Sharma J (as His Lordship then was) as to what amounts to "qualification" and "not available" as follows:

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> *The word "qualification" used in section 8A(2)(a) denotes an accomplishment or a quality and the adjective "special" qualifying it indicates that the accomplishment contemplated should be of an exceptional degree or such that excels in some way the measure of accomplishments reached by the advocates and solicitors of Malaysia.* As I read sub-section (2)(a) the applicant should be such a person who, as a lawyer and on the evidence before the court, exhibits *distinguished qualities or is devoted to a particular branch or field of law.* Instances would be of persons who specialise, for example, in income tax law, or trade marks, divorce practice, shipping law, etc. and have achieved such heights in the exercise of their profession that they stand out as great luminaries in the firmament of law. The list of such examples can by no means be exhaustive. It all depends upon the particular qualifications a particular lawyer has or the particular subject to which he has devoted himself. There may be, for example, instances where a lawyer exclusively practises before the highest courts of the land, or the highest appellate courts of the various countries of the Commonwealth or other lands where the law is similar to our own.
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> *The words "not available" used in sub-section (2) (a) seem to mean "not obtainable."* It would thus seem that it is the *excelling virtue born of the applicant's special qualifications or experience that has got to be considered and that excelling virtue must*

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be such as outclasses the excellence to be found in the local lawyers. The special qualifications or experience are required to be of a quality and type which cannot be had amongst the advocates and solicitors in Malaysia. *The applicant may have special qualifications or experience but that alone does not seem to be sufficient under the statute. He has to go further and satisfy the court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that no advocate and solicitor practising in Malaysia can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant …* (emphasis added)

[27] In *D'Cruz v. Attorney-General, Malaysia & Ano*r [1971] 1 LNS 26; [1971] 2 MLJ 130; [1971] 1 MLRH 319, the applicant was charged in the Sessions Court with an offence under s. 4(c) of the Prevention of Corruption Act 1961. The applicant's solicitor Mr. C.K.G. Pillay, said in his affidavit that he intends to instruct Dato' David Marshall to lead in this case as he was of the view that "in the circumstances of this case he possesses the special experience to do full justice to the applicant and to serve the administration of justice, that from instructions which the applicant has given him he is of the view that the case involves important points of law on jurisdiction, procedural matters, interpretation of Statutes and Government regulations, especially relating to the Malaysian navy, as well as matters of division of responsibility between the officers at various levels of the naval organisation and the whole network of the financial control of the Malaysian navy."

[28] This application was however, objected by the Attorney-General and the Bar Council as there was nothing to show that Dato' David Marshall has special qualifications or experience mentioned under s. 8A(2) of the Advocates and Solicitors Ordinance 1947 (M.U.4 of 1947).

[29] The application was dismissed by Syed Othman J (as His Lordship then was). In considering the submission on "special qualifications or experience not available amongst advocates and solicitors in Malaysia", the court held:

I shall deal with the *specific matters raised in the affidavits, most of which can be said to amount to nothing more than the opinion and belief of the applicant and Mr. Pillay.*

The charge against the applicant as shown in the affidavit of the applicant relates to an offence alleged to have been committed at K. D. Malaya, Woodlands, in the Republic of Singapore.

It is obvious from the charge that the question whether or not the Sessions Court has jurisdiction to try an offence committed at K.D. Malaya, Woodlands, in the Republic of Singapore, should be raised as a preliminary point; but I do not think that the point is of such magnitude as to be beyond the reach of an advocate and solicitor in this country.

It is not shown what are the procedural matters and the interpretation of statutes which are within the special qualifications or experience of Dato' David Marshall and not within the grasp of the ordinary practitioner in this country.

It is also said that the case involves Government regulations, especially relating to Malaysian navy as well as matters of division of responsibility between the officers at the various levels of the Naval organisation – in fact the whole network of the financial control and expenditure of the Malaysian navy. But there is nothing here to connect even the ordinary qualifications or experience of Dato' David Marshall with these regulations ... In the case here, it is not even shown that Dato' David Marshall has ever served in the Malaysian navy in any capacity in order to establish that he is better equipped than any practitioner in Malaysia in matters affecting the navy.

I come now to the constitutional right. Clause (3) of article 5 of the Constitution ... *If I may add I would say that generally the Constitution applies to Malaysia; by any stretch of imagination the right given under article 5 cannot be read as extending to any legal practitioner anywhere in the world regardless whether or not he is qualified to practise here; the right given to the arrested person in the article must be limited to the choice of legal practitioners who are qualified to practise under our law.*

I would like now to deal with the particular statements which have been deposed in the affidavits of the applicant and Mr. Pillay. The applicant says in his affidavit in view of the complexity of the case he feels that full justice can only be done if Dato' David Marshall is instructed by Mr. Pillay to act for him.

Mr. Pillay says in his affidavit that he was of the view that in the special circumstances of the case Dato' David Marshall possesses the special experience to do full justice to the applicant and to serve the administration of justice.

... *I am sure that our courts are quite capable of administering justice whether or not with the assistance of any advocate or solicitor.* The matters deposed in the affidavit which Dato' David Marshall is alleged to be specially qualified for or experienced in are commonplace and should be within the knowledge of any ordinary practitioner. *The corruption legislation has been with us in some form or other for many years and corruption cases are not uncommon here as in another country where a foreign practitioner may be practising.* Most of the celebrated cases of corruption which appear in The Malayan Law Journal have been decided by our courts. *I therefore find it difficult to accept that there is among the large body of advocates and solicitors in this country who live with our laws, not a single one who possesses special qualifications or experience to defend these cases and that a practitioner from another country, who does not live with our laws, is better equipped than the practitioners in this country with such qualifications or experience.* In any case, whether or not a practitioner from outside the Federation possesses special qualifications or experience "to do justice in a case", whatever that expression is intended to mean, is irrelevant for the purpose of *ad hoc* admission. What is relevant is whether for the purpose of a particular case he possesses special qualifications or experience not available amongst advocates and solicitors in Malaysia. To say that a practitioner whether in this country or elsewhere possesses the qualifications or experience to do justice in a case is inimical to our concept of justice. The administration of justice is a matter for the courts

> and not a matter for any advocate and solicitor in this country, let alone from abroad. His duty is to assist the courts in the administration of justice. This duty is paramount, it overrides his duty to his client. Although he is at all times required to act in the best interests of his client his duty does not entail him to get his client acquitted of the charge at ail costs. It is for him to assist the courts in eliciting the truth and to argue on facts and law. It has been said the result of the cause should be a matter of indifference to him. (emphasis added)

[30] In the Federal Court case of *Cherie Booth QC v. Attorney General, Malaysia & Ors* [2006] 4 CLJ 224; [2006] 2 MLRA 79; [2006] 6 MLJ 501; [2006] 6 AMR 93, the applicant applied for an *ad hoc* admission under s. 18(1) of the LPA for the purpose of appearing in two Federal Court appeals: *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (Interveners)* [2007] 4 CLJ 725. The Federal Court gave leave to Metramac to appeal against the judgment of the Court of Appeal on the following three questions:

(i) whether the creation of a trust under the agreement amounts to an illegal reduction of its capital;

(ii) whether the test adopted by the Court of Appeal in determining whether cl. 8 of the Signage Agreement is a stipulation by way of a penalty and/or a sum named in the contract for purposes of s. 75 of the Contracts Act 1950, is the correct test/or is exhaustive; and

(iii) whether the Court of Appeal's adverse remarks in the circumstances of the case showed a real danger of bias in the judgment arrived at against Metramac.

[31] It is noted that the Attorney-General, the Bar Council, the Kuala Lumpur Bar Committee, Metramac and two interveners namely Tun Daim Zainuddin and Tan Sri Halim Saad took a united stand to oppose the application. Their main ground of objection was that the appellant had no special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia.

[32] Nik Hashim FCJ (as His Lordship then was) dismissed the application with costs and made the following observation and ruling:

> [16] Thus, applying the above principles to the facts of this case, we agree with the learned counsel for the appellant that the appellant is an outstanding Queen's Counsel specialising in public law, administrative law and commercial law. She was called to the English Bar in 1976. In the Matrix Chambers website, she is described as 'Cherie is a leading Silk specializing in public law ...' (see p 940 vol 3 of the appeal record). She was also described in the international legal publication called Legal 500 as a leader, *inter alia*, in administrative and public law. The appellant further appears regularly in the British House of Lords and Court of Appeal. She

has also appeared in the European Court of Justice and in Commonwealth jurisdictions like Bermuda and the Cayman Islands. In addition, she is also a recorder (part-time judge) in the County Court and Crown Court and has given numerous public lectures and has authored many articles and books.

...

Non-availability of Advocates and Solicitors in Malaysia

[18] On the issue of non-availability of advocates and solicitors in Malaysia with similar qualifications or experience, we respectfully agree with the opinion of the learned High Court judge that such expertise are available amongst local advocates and solicitors.

[20] We fully subscribe to Sharma J's observation on the words 'not available' in relation to the non-availability of local advocates and solicitors with the special qualifications or experience in comparison to the special qualifications or experience of an applicant for an ad hoc admission to the Malaysian Bar. The special qualifications or experience that is required under s. 18(1)(a) of the LPA must be of a high degree of quality and type which cannot be found in local lawyers.

[21] With regard to the questions framed for the purpose of the appeal before the Federal Court, the first and second questions involve the interpretation of s. 64 of the Companies Act 1965 and s. 75 of the Contracts Act 1950 respectively. In so far as the second question is concerned, there is a Federal Court decision in *Selva Kumar a/l Murugiah v. Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817 in which local Malaysian counsel appeared. Thus, I agree with the learned judge when she said at p. 16 of her judgment on the two questions:

To my mind, a local advocate and solicitor will be very much placed to interpret and argue the authorities of s. 64 of the Companies Act and s. 75 of the Contracts Act.

[22] The third question is that of judicial bias. The laws on the issue of judicial bias have been decided by our Federal Court in the following cases:

(i) *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1;

(ii) *Mohamed Ezam bin Mohd Nor & Ors v. Ketua Polis Negara* [2002] 1 MLJ 321; and [2006] 6 MLJ 501 at 509

(iii) *Dato' Tan Heng Chiew v. Tan Kim Hor* [2006] 2 MLJ 293.

And in these cases the parties were represented by Malaysian lawyers, namely, Dato' Dr Cyrus Das, Dato' RR Sethu, Dato' Cecil Abraham, Dato' Muhammad Shafee Abdullah and Tuan Haji Sulaiman Abdullah, to mention a few. Obviously, they must have a deep understanding of the law on judicial bias to effectively submit to the court.

[23] It must be noted that in Malaysia the law in relation to judicial bias is premised on the 'real danger of bias' test as propounded in *R v. Gough* [1993] AC 646 unlike in the United Kingdom, where the appellant is practising, the test is premised on the 'real possibility of bias' as advocated by the House Lords in *Porter & Anor v. Magill* [2002] 1 All ER 465.

[24] On the issue of expunging the remarks made by the Court of Appeal in its written grounds of judgment against the interveners, there is indeed clear indication from local authorities as to the circumstances in which such applications will be allowed. There are two Malaysian cases on the point and they were ably argued by our advocates and solicitors. These two cases are:

(i) *Insas Bhd & Anor v. Ayer Molek Rubber Co Bhd & Or*s [1995] 2 MLJ 833; and

(ii) *Phileo Promenade Sdn Bhd & Anor v. Premier Model (M) Sdn Bhd* [2003] 2 MLJ 159.

[25] Now reverting to the appeal before us, it is pertinent to note that Fawziah Holdings had appointed Dato' RR Sethu as senior counsel to argue the case in the High Court. In the Court of Appeal, Fawziah Holdings appointed Dato' Dr Cyrus Das as senior counsel. Both are senior members of the Bar and they are experienced and capable of handling the pending appeals in the Federal Court. Dato' Dr Cyrus Das (called to the Malaysian Bar in 1973) and Dato' RR Sethu are familiar personalities in this court and we are all aware of their capabilities as counsel. They need no introduction. *It is therefore not true that there is no availability of local advocates and solicitors of a quality and type amongst the 12,000 of them in Malaysia who are equally qualified and experienced to handle the appeals before us.* (emphasis added)

[33] In *Jude Philomen Benny v. Majlis Peguam Malaysia & Anor* [1997] 1 LNS 426; [1997] 5 MLJ 306; [1997] 5 MLRH 450; the applicant is an advocate and solicitor in Singapore specialising in shipping and admiralty law in Singapore. The applicant applied for admission to appear for the defendant in a civil suit. Nik Hashim JC (as His Lordship then was) was of the view that the special qualifications or experience of the applicant must be substantiated with proof.

[34] The Attorney-General did not oppose the application. However, both the Bar Council and the Kuala Lumpur Bar Committee opposed the application and their main ground of objection was that the applicant had no special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia.

[35] In *Jude Philomen* (*supra*), learned counsel for the applicant argued that what is required for the conduct of the civil suit is counsel who has the expertise in the navigational aspects of shipping, seamanship and the method

of stability calculations of ocean-going vessels and the methods of salvage to be able to adduce evidence and cross-examine witnesses who would probably be familiar with or be experts in the specialised aspect of shipping.

[36] On the other hand, the Kuala Lumpur Bar Committee stated that the issues in the civil suit are: (a) *locus standi*; (b) insurable interest; (c) constructive total loss; (d) delay; (e) salvage; and (f) unseaworthiness. The Kuala Lumpur Bar Committee contended that these issues are not difficult issues of marine insurance law but are issues that are encountered regularly in marine insurance and which have already been dealt with and litigated in Malaysia in several cases in which local Malaysian counsel have appeared before.

[37] In dismissing the application, the High Court stated this:

> ... the applicant has not shown by means other than affidavit evidence that he possesses the necessary qualifications and experience. There was no hard proof to substantiate his expertise. Bare statements without supporting and independent evidence are not sufficient to satisfy his claims.
>
> *In my view, the qualifications and experience of the applicant as evidenced in court cannot be classified as special and of a quality which cannot be had amongst the local lawyers. His qualifications and experience are not an accomplishment of an exceptional degree that excels the accomplishment of lawyers in the country.*
>
> (emphasis added)

[38] Having referred to the above case laws, it is clear that the law requires the applicant to prove that he possesses special qualifications, experience and expertise which is not available amongst advocates and solicitors in Malaysia for the purpose of the appeal before the Federal Court.

Main Grounds Of The Application

[39] The grounds of this OM are set out in the affidavit in support affirmed by Tan Sri Muhammad Shafee bin Md Abdullah and are summarised as follows:

(i) *vide* the appeals, the appellant, appeals to the Federal Court of Malaysia against the orders of the Court of Appeal of Malaysia which dismissed the appellant's appeal against the convictions and sentences pronounced against him by the High Court of Kuala Lumpur;

(ii) the appeals will involve serious, complex and/or novel issues related to several branches of criminal and civil laws, practice and evidence, the constitutional rights of the appellant, the conduct of proceedings by the prosecution, the adjudication of criminal cases by a trial court and the administration of the criminal justice system;

(iii) Messrs Shafee & Co are solicitors for the appellant in the appeals and the appellant wishes to engage the professional services of the applicant to act as lead counsel in the appeals. Messrs Shafee & Co and Tan Sri Muhammad Shafee Abdullah have instructed the applicant accordingly;

(iv) for the purposes of the appeals, the applicant possesses special qualifications, experience and expertise which is not available amongst advocates and solicitors in Malaysia; and

(v) in addition, it is the position of the appellant's counsel that the applicant is eligible and qualified to be admitted to practice as an advocate and solicitor of the High Court of Malaya pursuant to s. 18(1) of the LPA to appear as lead counsel on behalf of the appellant in respect of the appeals and all other causes or matters related thereto.

[40] The applicant further elaborated on the alleged serious, complex and/or novel issues which will feature in the appeal before the Federal Court including the following:

(i) statutory presumption under s. 23(2) of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act 2009) and advance disclosure by the prosecution;

(ii) statutory construction of "interest" in s. 23(2) of the MACC Act 2009;

(iii) statutory presumption under s. 50(1) of the MACC Act 2009;

(iv) statutory construction of s. 23(4) of the MACC Act 2009;

(v) interpretation of "agent" having regard to s. 409 of the Penal Code read together with s. 402A of the same Code;

(vi) interpretation of "shadow director";

(vii) distinction between shareholders and directors;

(viii) on proper scrutiny of established evidence based on the facts of the case whether the actus reus of s. 409 of the Penal Code charges can be transposed either by way of agency or shadow directorship;

(ix) admission of evidence of a third party could be admitted against the appellant;

(x) predicate offence of our Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA 2001) in comparison with the English Proceeds of Crime Act 2002;

(xi) full disclosure and discovery and constitutional right;

(xii) pre-trial disclosure of facts favourable to the appellant and art. 5 of the Federal Constitution;

A (xiii) determination as to whether the appellant's constitutional rights were infringed by the manner the prosecution had conducted the case;

(xiv) issue on *prima facie* stage; and

(xv) another issue on *prima facie* stage.

B **[41]** It can be alluded that the appeal concerned our local laws *ie*, the Penal Code, Criminal Procedure Code, MACC Act 2009, AMLATFPUAA 2001 and Federal Constitution.

Background Of Jonathan Laidlaw QC

C **[42]** According to the Queen's counsel appointment website https://qcappointments.org/, the award of Queen's counsel is for excellence in advocacy in the higher courts. It is made to advocates who have rights of audience in the higher courts of England and Wales and have demonstrated the competencies in the Competency Framework to a standard of excellence. D Queen's counsel is appointed from amongst practising advocates – both barristers and solicitors. They are appointed because they have demonstrated excellence in advocacy in difficult cases in the higher courts of England and Wales, or in tribunals or arbitrations.

[43] In the affidavit in support of this OM, the introduction of the applicant E by his counsel could be summarised as follows:

(i) The applicant is a barrister called to the Bar of England Wales in 1982 and appointed as Queen's counsel in 2008. The applicant practises from 2 Hare Court in the Temple, London. The applicant has led that set of Chambers, with its 23 Queen's Counsel and three Treasury F Counsel since 2013.

(ii) The applicant was appointed as Junior Treasury Counsel in 1995, Senior Treasury Counsel in 2000 and First Senior Treasury Counsel in 2008. Treasury Counsel is a team of specialist advocates who prosecute many of the most serious and complex cases in the UK, and G advise and appear on behalf of the Law Officers, and other Government departments.

(iii) The applicant was involved in the Official Secrets Act prosecutions of Tomlinson and Shayler, the Jill Dando murder trials, the prosecution of Barot and others, the trial of serial rapist Delroy Grant, etc. H

(iv) The applicant has sat as a Recorder of the Crown Court since 1995 and has special permission to sit as a judge at the Central Criminal Court.

(v) The applicant is also a Master of the Bench of The Honourable Society of the Inner Temple and is a previous Chair of the Criminal Bar I Association's Education Committee. The applicant has been a tutor trainer on the Judicial Studies Board and has provided advocacy training to students of the Inner Temple.

(vi) The applicant has appeared, as a defence QC, in Radovan Karadzic's case in the Hague, in the Edward Snowden leaked sensitive papers, for Rebekah Brooks in the News International phone-hacking trial, etc.

(vii) The applicant specialises in business and financial crime and is a previous recipient of the Chambers and Partners 'Crime Silk of the Year' award. The features in the Sunday Times/Debretts list of the 500 most influential people in the Britain today.

(viii) The applicant has appeared for a large number of corporate clients.

(ix) A copy of the applicant's curriculum vitae is marked as exh. "MSA3".

Submission Of The Applicant's Counsel

[44] The applicant's counsel submitted that the applicant has special and unparalleled qualifications and experience in a whole range of corruption cases both in the United Kingdom and in overseas jurisdictions.

[45] The applicant's counsel named some corruption cases that the applicant has represented the parties before such as the applicant represented two members of the House of Lords and a member of the House of Commons who were embroiled in the "cash for honours" scandal which involved an alleged link between loans to UK political parties and the grating of life peerages; the applicant represented Sumant Kapur and the Choudhrie brothers in the UK Serious Fraud Office probe into the corruption of Indian Government officials in respect of Rolls Royce defence contracts; the applicant advised former senior Government officials in respect of corruption allegations arising out of the letting of state contracts; the applicant acted for Alexander Machkevitch and his company ENRC who face a UK Serious Fraud Office investigation in respect of Congolese mining licences, etc.

[46] Besides being a defence counsel, the applicant was also involved in the Official Secrets Act prosecutions of Tomlinson and Shayler, the Jill Dando murder trials, the prosecution of Barot and others, the trial of serial rapist Delroy Grant, etc.

[47] The applicant's counsel further submitted that the applicant has very considerable experience in the area of disclosure. The applicant's counsel submitted that the applicant was a consultee in respect of both the Criminal Procedure and Investigations Act 1996 and the Codes of Practice which accompanied the Act.

[48] It was also claimed by the applicant's counsel that the Criminal Procedure and Investigations Act 1996 is probably the most demanding and detailed set of disclosure obligations imposed upon the prosecuting authorities anywhere in the world.

[49] The applicant's counsel submitted that the applicant's experience and expertise in both prosecution and defence in a substantial number of criminal cases place him in an unrivalled position to address the Federal Court on the issues relating to the alleged impugned conduct of the prosecution and the constitutional rights of accused persons to a fair trial.

[50] Very carefully, the applicant's counsel vehemently submitted that the correct approach to interpret s. 18(1) of the LPA is for the applicant to show he has special qualifications or experience of a nature not available among advocates and solicitors in Malaysia.

[51] The applicant's counsel therefore concluded and submitted that the applicant's application for admission to be allowed.

United Objection By The Parties

[52] The parties interested in the application, namely the Honourable Attorney-General, the Bar Council, the Kuala Lumpur Bar Committee and the learned Deputy Public Prosecutors (DPP) were united in objecting to the application for the main reason that the applicant does not possess special qualifications, experience and expertise which is not available amongst advocates and solicitors in Malaysia for the purpose of the appeal.

[53] The learned DPP averred that though it was noted in para. 2945 of the High Court grounds of the judgment dated 21 August 2020 that the learned High Court Judge, Mohd Nazlan Ghazali J (now JCA) acknowledged that there are novel and new points of law involved in the deliberation of the case, the said High Court Judge emphasised that these issues or points of law, *albeit* never judicially considered before, were not difficult.

[54] The learned DPP further averred that these issues have been carefully deliberated by the learned High Court Judge having considered the provisions of the respective legislations, evidence adduced and judicial precedence and subsequently further deliberated and affirmed by the Court of Appeal on 8 December 2021.

[55] In addition, the learned DPP averred that the applicant does not possess experience in conducting criminal trials or criminal appeals in relation to s. 23 of the MACC Act 2009, s. 409 of the Penal Code and s. 4 of the AMLATFPUAA 2001. The applicant is not well versed with the laws involved in the pending appeals before the Federal Court nor has any experience with the Malaysian legal system.

[56] It has also been averred that it is difficult to accept the fact that out of the current 21,625 advocates and solicitors in Malaysia, there is no advocate and solicitor, who possesses special qualification or experience to appear in these appeals except the applicant. This is the position because the case was handled by the appellant's counsel and his team over the last three years since the initiation of the charge against the appellant in the Sessions Court which was later transferred to the High Court.

[57] It is the averment of the learned DPP that the applicant is not knowledgeable about local laws and given that this is an appeal at the final stage, he may not be well-versed with the facts of the case unlike the appellant's counsel and his team who has been handling the case during the trial as well as the appeal before the Court of Appeal.

[58] The honourable Attorney-General shared the same view with the learned DPP and submitted that the applicant does not possess special qualifications, experience and expertise which is not available amongst advocates and solicitors in Malaysia for the purpose of the appeal.

[59] The Bar Council submitted that the applicant does not satisfy the criteria in s. 18 of the LPA and he has failed to show or discharged his burden in proving that he has special qualifications or experience of a nature not available among advocates and solicitors in Malaysia.

[60] The Bar Council stated that when Malaya was independent in 1957, it was true that the Federation only had a limited number of local advocates and solicitors in the various fields of ligation. In those days, in certain fields of litigations involving constitutional law, administrative law, and certain technical or specialised areas of law, the assistance of foreign lawyers was welcomed in order to enhance the knowledge, expertise and jurisprudence in those fields of law. However, as of 27 June 2022, there are 21,659 advocates and solicitors practising advocates and solicitors. After 65 years post-independence, the Bar Council has grown in strength quantitively and qualitatively. They are many advocates and solicitors with subject matter expertise and experience in criminal defence litigation.

[61] The Bar Council further averred that our criminal law and criminal jurisprudence are provided in statutes. The amended charge under s. 23 of the AMLATFPUAA 2001 is one which requires making of findings of fact and interpretation of the local statute. The decision and findings of the High Court on 28 July 2020 were tested and upheld by the Court of Appeal on 8 December 2021. Similarly, the three amended charges for offences of criminal breach of trust by agent under s. 409 of the Penal Code is also our local legislation and required making of the finding of facts. The decision and findings of the High Court on 28 July 2020 were tested and upheld by the Court of Appeal on 8 December 2021. The three amended charges of money laundering under s. 4(1)(b) of the AMLATFPUAA 2001 is another piece of local legislation and again would have required the making of the finding of facts. The decision and findings of the High Court on 28 July 2020 were tested and upheld by the Court of Appeal on 8 December 2021.

[62] In addition to the above, the Bar Council averred that a perusal of the applicant's qualifications and expertise does not reveal that he has the special qualifications or experience in the Malaysian legal system, the Malaysian legal criminal system and in other related jurisprudence required for the appeals.

[63] On the contrary, the Bar Council was of the view that the applicant's counsel Tan Sri Shafee and his legal team who have been involved in the case from inception are more familiar with the facts, charges and statutory provisions of the appeals than the applicant.

[64] The Bar Council was of the considered view that Tan Sri Shafee has been involved in precedent cases relating to the various statutory provisions which is the subject matter of the appeals. Besides Tan Sri Shafee, there are other advocates and solicitors in Malaysia who are still in practice and have the experience and qualification in criminal defence litigation involved in the said laws.

[65] Lastly, the Kuala Lumpur Bar Committee took the same stand and opposes to the applicant's application. The reasons given by the Kuala Lumpur Bar Committee are similar to those given by others.

[66] The Kuala Lumpur Bar Committee pointed out that Tan Sri Shafee had explained the need for the services of the applicant relates to the nature of the issues that Tan Sri Shafee himself believes will arise in the appeals. Tan Sri Shafee has gone further to specifically identify the key issues which he believes will arise. In this context, the Kuala Lumpur Bar Committee averred that Tan Sri Shafee was lead counsel for the appellant in the High Court and the Court of Appeal and is instrumental in settling the petitions of appeal in the appeals.

[67] The Kuala Lumpur Bar Committee submitted that from the applicant's *curriculum vitae*, the required special qualifications or experience in the areas of the law of the appeals is conspicuous in its absence. The Federal Constitution is *sui generis* and calls for its own principles of interpretation. The interpretation of our own laws is a subject that is exclusive to Malaysians, not foreigners. The Kuala Lumpur Bar Committee further stated that the UK practises parliamentary sovereignty, which is different from Malaysia which practises constitutional supremacy.

[68] The Kuala Lumpur Bar Committee was of the view that it is an exaggeration for Tan Sri Shafee to suggest that the applicant is in an unrivalled position to address our Federal Court in the issues relating to the impugned conduct of the prosecution and the constitutional rights of accused persons to a fair trial. Those matters must be considered in the light of Malaysian law and the local context for which the applicant is clearly unsuited.

[69] More importantly, the Kuala Lumpur Bar Committee averred that there is nothing to suggest that Tan Sri Shafee has lost confidence to argue the appeals; nor the appellant has lost confidence in Tan Sri Shafee's competence to discharge his role as lead counsel in the appeals.

[70] The Kuala Lumpur Bar Committee emphasised that Tan Sri Shafee himself has sufficient required special qualifications and experience as Tan Sri Shafee had been a Deputy Public Prosecutor before. He was involved in some high-profile cases until he left service in 1983. As a private practitioner, Tan Sri Shafee appeared for a former Chief Minister of Selangor who was charged for gratification and corrupt act. Tan Sri Shafee was appointed by the then Attorney-General in 2013 to prosecute Dato' Seri Anwar Ibrahim in an appeal by the Attorney-General in the Court of Appeal and subsequent appeal in the Federal Court.

[71] The Kuala Lumpur Bar Committee further submitted that Tan Sri Shafee had been referred to in the media as a "high profile lawyer" and "top lawyer" in the articles in the media ("counsel rests his case", Sunday Star, 27 September 2009; and "within the letter of the law", The Star Online, 5 October 2009). In the latter he was quoted as stating "I can tell you that whenever I am a defence counsel, the AG's Chambers always sends, without doubt, their best team against me. This is true." He also stated, "I am also one of the world's experts on extradition and mutual assistance cases".

[72] For a practical reason, the Kuala Lumpur Bar Committee raised doubt as to whether the applicant as a foreign legal practitioner, who handled neither the lengthy trial nor the appeal and lacked local knowledge would be able to provide effective assistance to the Federal Court in this appeal as justice delayed is justice denied.

Findings

[73] Before I proceed to decide as to whether the applicant has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of the appeal, first I would like to deal with the requirement of Bahasa Malaysia for admission under s. 18(1) of the LPA.

[74] The parties did not submit substantially on the requirement of Bahasa Malaysia under s. 11(2) of the LPA. In general, all the parties noted that Nik Hashim FCJ (as His Lordship then was) in *Cherie Booth QC* (*supra*) expressed his reservation on the correctness of the Federal Court's decision in *Peguam Negara & Ors v. Geoffrey Robertson* [2002] 2 CLJ 493; [2002] 2 MLJ 449; [2002] 1 MLRA 106; [2002] 2 AMR 1977 about whether a foreign legal practitioner could be admitted without the Bahasa Malaysia qualification.

[75] I must emphasise that the Federal Court in *Cherie Booth QC* (*supra*) did not revisit the decision of *Geoffrey Robertson* (*supra*) on the requirement of Bahasa Malaysia qualification at that juncture. The Federal Court was of the view that it was not essential for the determination of that appeal and it would leave the matter to another occasion.

[76] For ease of reference purposes, I first refer to the case of *Geoffrey Robertson* (*supra*) where Abdul Malek Ahmad FCJ (as His Lordship then was) held on pp. 502 to 503 (CLJ); pp. 456 to 457 (MLJ) as follows:

> The question is, must the non-Malaysian applicant under s. 18 of the LPA fulfil all the requirements of s. 11, in particular s. 11(2) of the LPA to be considered eligible to be admitted? *With the words 'Notwithstanding anything contained in this Act' in s. 18 of the LPA staring at us, it clearly excludes the application of s. 11 of the LPA, and so our finding is that the only requirement for the applicant under s. 18 of the LPA are those stated in sub-ss. (1)(a) and (b) of that section.*
>
> It must be observed that both s. 11(2) and s. 18 of the LPA came about at the same time through Act A567 which came into force on 16 December 1983. Since the coming into force of the LPA on 1 June 1977 until then, there was no provision for a non-Malaysian qualified person to apply to be admitted under special circumstances, if it was the intention of the legislature to make a non-Malaysian qualified person who applies under s. 18 of the LPA to fulfil the requirements of s. 11, which included s. 11(2) of the LPA when s. 18 of the LPA came into force, then the LPA would have expressly stated so either in s. 18 itself or through some other provision in the LPA.
>
> The explanatory statement to the bill making the amendments states, as regards the addition of s. 11(2) of the LPA, through cl. 9 of the bill as follows:
>
> Clause 9 seeks to introduce a new provision whereby as from 1 January 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of sub-s. (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.
>
> ...
>
> On these considerations, *we can only come to the opinion that the application of s. 11, in particular s. 11(2), of the LPA to a non-Malaysian qualified person does not arise as all he has to fulfil are the requirements stated in s. 18 of the LPA itself, a view fortified by the inclusion of the opening words of that section.*
>
> (emphasis added)

[77] Subsequently, Nik Hashim FCJ (as His Lordship then was) in *Cherie Booth QC* (*supra*) noted in para. 28 as follows:

> [28] However, that is not the end of the matter. *At the outset of the hearing of this appeal, the Right Honourable Chief Justice Tun Dato' Sri Ahmad Fairuz bin Dato' Sheikh Abdul Halim questioned whether foreign lawyers could be admitted to the Bar without Bahasa Malaysia qualification as required under s. 11(2) of the LPA. After hearing the parties, we expressed our reservation on the correctness of the decision in Attorney General & Ors v. Geoffrey Robertson [2002] 2 MLJ 449 where the Federal Court ruled thats s. 11(2) is not applicable to an ad hoc admission under s. 18(1) of the LPA. We, however, did not propose to revisit the decision at this juncture as it was not essential for the determination of this appeal. We would leave the matter to another occasion.* (emphasis added)

[78] In considering the view of the Federal Court in the case of *Cherie Booth QC* (*supra*) which reserves the decision of the earlier Federal Court in *Geoffrey Robertson* (*supra*), I am of the considered opinion that in light of the judicial precedence being the heart of the administration of justice in our country, this court is bound by the decision of the Federal Court in the case of *Geoffrey Robertson* (*supra*).

[79] Therefore, based on *Geoffrey Robertson* (*supra*), it is my considered view that the issue of s. 11(2) of the LPA on the qualification of Bahasa Malaysia does not arise in the instant application given the express words of "Notwithstanding anything contained in this Act" in s. 18 of the LPA which clearly excludes the application of s. 11(2) of the LPA.

[80] With that exclusion, I am of the view that the requirements that the applicant has to satisfy for this *ad hoc* admission are as follows:

(i) he has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of the appeal; and

(ii) he has been instructed by an advocate and solicitor in Malaysia.

[81] It is not in dispute that the applicant has satisfied the second requirement. The first requirement is the only issue of this OM. In considering the first requirement, I am of the considered opinion that the list of issues raised by the appellant's counsel are not complex, exceptional nor serious warranting the *ad hoc* admission of the applicant to be lead counsel for the purpose of the appeal before the Federal Court on 15 August 2022.

[82] I find that the applicant does not have special qualifications or experience in conducting criminal trials and appeals like the charges against the appellant, namely s. 23 of the MACC Act 2009, s. 409 of the Penal Code and s. 4 of the AMLATFPUAA 2001. The contents and averments in the affidavit in support do not substantiate the applicant's special qualifications or experience to conduct the appellant's appeals relating to the said charges.

[83] Further, I am also of the view that the applicant has not shown himself as one who possesses special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia. The applicant has not shown that local advocates and solicitors lack the ability and/or special qualifications or experience to conduct the appeals relating to the said charges and all other causes or matters related thereto.

[84] In fact, I find that there are several reported precedent case laws on s. 23 of the MACC Act 2009, s. 409 of the Penal Code, s. 4(1) of the AMLATPUAA 2001, Criminal Procedure Code and art. 5 of the Federal Constitution.

[85] For instance, *PP v. Dato' Sri Mohd Najib Hj Abd Razak* [2019] 6 CLJ 561; [2019] 4 MLJ 421, *Dato' Sri Mohd Najib Hj Abd Razak v. PP* [2022] 4 CLJ 231; [2022] 1 MLJ 137 on s. 23 of the MACC Act 2009; *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199; [2021] 5 MLJ 209, *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565; [2007] 2 MLJ 101 on s. 409 of the Penal Code; *Hamimah Idruss v. PP* [2020] 6 CLJ 407; [2020] 5 MLJ 161, *Aisyah Mohd Rose & Anor v. PP* [2016] 1 CLJ 529; [2016] 1 MLJ 840 on s. 4(1) of the AMLATPUAA 2001; *Husdi v. PP* [1980] 1 LNS 29; [1980] 2 MLJ 80, *Husdi v. PP* [1979] 1 LNS 33; [1979] 2 MLJ 304, *Siti Aisyah v. PP* [2019] 7 CLJ 27; [2019] 4 MLJ 46 on delivery of certain documents under the Criminal Procedure Code; *Letitia Bosman v. PP & Other Appeals* [2020] 8 CLJ 147; [2020] 5 MLJ 277, *Lee Kwan Woh v. PP* [2009] 5 CLJ 631; [2009] 5 MLJ 301 on art. 5 of the Federal Constitution.

[86] In this regard, considering the facts of the instant case, it raises genuine concern and doubts to the extent the *ad hoc* admission of the applicant (not know the local laws) would benefit the local legal fraternity. Further, I find that there is no single evidence to suggest that the applicant has knowledge or much experience in the local law compared to the local advocates and solicitors in Malaysia.

[87] From a perusal of the applicant's *curriculum vitae* which is marked as exh. "MSA3" it would indicate that the applicant does not have any experience in handling nor providing any legal advice or expert legal services within the jurisdiction of Malaysia.

[88] It is my view that the mere fact that the applicant had conducted several cases involving business crimes and financial services, criminal defence, criminal regulatory, inquest and public inquiries, private prosecution, sports law, and professional discipline in the UK as well as in other jurisdiction (except for Malaysia) could not be said to mean that there are no local advocates and solicitors available in Malaysia that does not possess the same skills and success in conducting trials in respect of charges under the AMLATFPUAA 2001, MACC Act 2009, Penal Code and Criminal Procedure Code.

[89] It is undeniable that the applicant is deemed as the "star silks in financial crimes", but to me, that alone does not suffice as possessing special skills, expertise, qualifications and knowledge on the application of the MACC Act 2009, AMLATFPUAA 2001, Penal Code, Criminal Procedure Code and our *sui generis* Federal Constitution in our country which is relevant to the appeals before the Federal Court on 15 August 2022.

[90] Furthermore, looking at the local case laws that have been developed over the years along with the necessary amendments made to the Criminal Procedure Code, MACC Act 2009 and AMLATFPUAA 2001, I am of the considered view that the local advocates and solicitors are well capable of

handling such cases at all tiers of the court in Malaysia. This does not justify the need to have the applicant, Queen's counsel to be admitted on an *ad hoc* basis as the lead counsel for the appeal before the Federal Court.

[91] Similar to the case of *Cherie Booth QC* (*supra*), the applicant in this present OM did not represent the appellant during the trial before the High Court nor during the appeal before the Court Appeal. This raises a doubt on the extent the argument raised by the applicant would assist the Federal Court in their decision making if the *ad hoc* admission of the applicant in Malaysia as the senior counsel of the appellant is allowed.

[92] It is undisputed that there are novel issues or points of law involved in the present case, but it is subject to judicial determination based on our local laws. In fact, there are voluminous reported local case laws where our courts have to decide on novel issues or points of law with the representation of our local advocates and solicitors.

[93] Besides, the learned High Court Judge, Mohd Nazlan bin Mohd Ghazali (now JCA) in the case of *Dato' Sri Najib Razak* (*supra*) also acknowledged that there are novel and new points of law involved but emphasised that these issues or points of law, *albeit* never judicially considered before, were not difficult.

[94] To me, this novelty issue does not automatically render them complex justifying the need for the *ad hoc* admission of the Queen's counsel as to do so would impliedly suggest that our local advocates and solicitors including the appellant's counsel and his team are not known to the local laws nor flexible and malleable to the changes and development of the law.

Conclusion

[95] Based on the abovementioned cases and the provisions of the law as well as having perused the *Hansard* in respect of s. 18(1) of the LPA, I am of the considered opinion that the present OM ought to be dismissed on the grounds that there exists no issues of complexity, novelty and seriousness that requires the admission and the expert submission of the applicant.

[96] Having regard to all the facts in the supporting affidavits, it is my considered judgment that the applicant has failed to satisfy me under s. 18(1) of the LPA that for the purpose of the appeal and all other causes or matters related thereto, he has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia.

[97] I agree with the honourable Attorney-General, the learned DPP, the Bar Council and the Kuala Lumpur Bar Committee that the appeal is one that can quite competently be handled by local advocates and solicitors.

[98] As such, the OM (encl. 1) is hereby dismissed with no order as to costs.